

H2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

FILE#

Office: Miami

Date:

APR 21 2003

IN RE: Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under  
Section 212(i) of the Immigration and Nationality Act, 8  
U.S.C. 1182(i)

**PUBLIC COPY**

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wieman, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who attempted to procure admission into the United States on February 16, 1994, by presenting a Haitian passport and Resident Alien Card in another person's name. She was charged with being inadmissible under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and § 1182(a)(7)(A)(i), for having attempted to procure admission into the United States by fraud and for being an immigrant without a valid immigrant visa or lieu document. The applicant was paroled into the United States for a hearing.

The applicant married a native of Haiti and naturalized U.S. citizen on June 7, 1996, and that marriage was terminated.

The applicant seeks a waiver of the permanent bar under section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States.

The district director denied the application on the ground that the applicant failed to have any qualifying relatives, and therefore, she was ineligible for a waiver under section 212(i) of the Act.

On appeal, counsel states that the applicant has a U.S. citizen child born in November 1998. Counsel also asserts that the application should be adjudicated under the statute in effect at the time of her violation and not based on the IIRIRA amendments.

An appeal must be decided according to the law as it exists on the date it is before the appellate body. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. *Matter of Patel*, 19 I&N Dec. 774, 779 (BIA 1988) (citing *Bradley v. Richmond School Board*, 416 U.S. 696, 710-1 (1974)). If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George and Lopez-Alvarez*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque*, 12 I&N Dec. 633 (BIA 1968).

Section 212(a)(6)(C) of the Act provides, in part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

(1) The Attorney General, may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Secretary regarding a waiver under paragraph (1).

A review of the record reflects that the applicant has no qualifying relatives to establish her eligibility for the above waiver. Therefore, the appeal will be dismissed. A child is not a qualifying relative under 8 C.F.R. § 212(i).

**ORDER:** The appeal is dismissed.

RECEIVED  
JAN 25 1994  
U.S. DEPT. OF JUSTICE  
IMMIGRATION & NATURALIZATION SERVICE